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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/058,595	01/28/2002	Susan Flappan	2845	4083

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EXAMINER

CROSS, LATOYA I

ART UNIT

PAPER NUMBER

1743

DATE MAILED: 09/15/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/058,595

Applicant(s)

FLAPPAN, SUSAN

Examiner

LaToya I. Cross

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 June 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-32 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-32 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

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DETAILED ACTION

This Office Action is in response to Applicants' amendment filed on June 19, 2003 and entered as Paper No. 11. Claims 1-32 are pending.

Withdrawal of Rejections from Previous Office Action

- The rejection of claim 9 under 35 USC 112, second paragraph is withdrawn in view of Applicant's deletion of the unclear language.
- The rejection of claims 3, 8, 11 and 15 over Borkowski in view of Dimou et al is withdrawn.

Claim Rejections - 35 USC § 112

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 1-31 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claims 1-31 recite "an environmental surface". The original specification does not provide for an environmental surface. The specification states "surface" broadly and does not identify any particular surface for the device and method are to be used on. Further, it is unclear as to what Applicants' intend by an "environmental surface". In other words, what surface would constitute an environmental surface?

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Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1, 4-6, 10, 12, 13 and 30-32 are rejected under 35 U.S.C. 102(e) as being anticipated by US Patent 6,447,463 to Borkowski.

Borkowski teaches a fungal infection diagnostic kit. The kit includes a translucent diagnostic slide having a retractable self-adhesive translucent tape thereon. The tape (2) has a window (3) that is "centrally" translucent providing a translucent window for collecting a fungus sample onto the translucent area of the tape as recited in claim 1 (col. 2, lines 24-26). The tape is affixed to a plastic slide (1) after trapping sample on the sticky side of the tape. At col. 4, lines 19-34, Borkowski teaches that fragments of tape may be used. After the sample is collected onto the tape, the tape is attached to the slide. Therefore, the tape need not be permanently attached to the slide. With regard to claims 4 and 5, a rectangular piece of glossy paper (6) is attached to the back of the adhesive tape. This rectangular paper serves as a tab to help the user in manipulating the sample and/or the slide. Figure 1 of Borkowski shows a kit box for storing the slide structure and transporting the sample back to the laboratory. Regarding claims 6, 12 and 13, Borkowski teaches that the kit can include a data form to be completed by the user requesting information regarding the sample, conditions of the sample and other information (col. 4, lines 9-16). The test slide also contains a bar code (4, 5) or other

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identifier. In using the diagnostic kit of Borkowski, the user touches the contaminated area with the adhesive tape, preferably in the window portion, to lift off a sample of the contaminated area. The tape is then attached to the slide and sent to the laboratory for testing. The sample is stained and examined under a microscope by a technician. Results from the tests are reported back to the user. With respect to claim 32, Borkowski teaches a test tape having a translucent window area and a handling end (rectangular paper), which is adjacent the window area and is adhesive-free for easy manipulation of the test tape by the user.

It is noted that Applicants' claims are directed to testing an environmental sample for the presence of primarily mold. Borkowski teaches testing samples for the presence of fungus, which would include molds. Neither Applicants' claims nor specification defines what is meant by "environmental sample" or "environmental surface". Thus, the claims have been construed broadly and have been taken to mean any surface.

Therefore, for the reasons set forth above, Applicants' claimed invention is deemed to be anticipated, within the meaning of 35 USC 102(e) in view of the teachings of Borkowski.

Claim Rejections - 35 USC § 103

5. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

6. Claims 3 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Borkowski in view of US Patent 5,812,312 to Lorincz.

With respect to claims 3 and 15, Borkowski fails to teach using a grid over the window area.

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Lorincz teaches a microscope slide has a test tape (16) for collecting a sample. The test tape includes a sizing grid (19) to serve as a reference for aiding in determining the size and quantity of sample. It would have been obvious to one of ordinary skill in the art to incorporate a grid onto test tape of Borkowski to aid the user in determining the size of the sample as well as in quantifying the sample. While Lorincz may not use the reference grid for the same reasons as Applicants, the rationale for modifying a reference need not be the same as Applicants. See MPEP 2144.

Therefore, for the reasons set forth above, Applicants' claimed invention is deemed to be obvious, within the meaning of 35 USC 103 in view of the teachings of Borkowski and Lorincz.

7. Claims 2, 7-9, 11, 14 and 16-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Borkowski in view of US Patent 5,582,298 to Clayton et al.

With respect to the above-mentioned claims, Borkowski fails to teach 1) multiple test tapes and 2) a placard for attachment of the test slide.

With respect to the use of a plurality of test tapes, test kits are conventionally manufactured with several testing elements. Clayton et al teaches multiple tape areas (40) to allow for multiple samples to be collected and tested. It would have been obvious to modify Borkowski by including multiple test tapes so that multiple samples could be taken. In taken multiple samples, more tests could be run and thus, the likeliness of an accurate result increases.

With respect to the use of a placard, Clayton et al further teaches that the test tape samples are attached to an adhesive area (40) on a placard (ply 12). The test tapes are attached

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in the areas designated by indicia or lines of weakening. Instructions (70) are also formed on the placard.

It would have been obvious to one of ordinary skill in the art to use a placard to attach the samples of Borkowski because in using a placard, a means is provided for all of the samples to be gathered in a single organized place. This will allow for ease in collection and transport of the samples. The placard also provides a manner for sending the samples to the laboratory in an organized manner, which may reduce the likeliness of the samples being damaged or loss.

Therefore, for the reasons set forth above, Applicants' claimed invention is deemed to be obvious, within the meaning of 35 USC 103 in view of the teachings of Borkowski and Clayton et al.

Response to Arguments

8. Applicant's arguments filed June 19, 2003 have been fully considered but they are not persuasive. With respect to the Borkowski reference, Applicants argue 1) Borkowski does not teach that only the window area of the test tape is transparent, 2) the test tape of Borkowski is permanently affixed to the slide and 3) Borkowski does not teach collecting mold samples.

With respect to the window area being transparent, Borkowski teaches at col. 2, lines 24-26 that that the test tape is "centrally translucent". In considering this statement in conjunction with figures 2, 5 and 6, it seems apparent that only the window area of the test tape is translucent. Further, figures 5 and 6 show a sample being collected only in the centrally translucent area of the test tape.

With respect to the test tape being permanently affixed to the slide, Borkowski teaches at col. 4, lines 19-34 that fragments of test tape may be used to collect a sample and the

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fragments are affixed to a slide. Thus, it appears that Borkowski envisioned tape that is affixed to the slide, as well as tape fragments that are not affixed to the slide and are placed on the slide after collecting the sample.

With respect to the sample taken being mold, Borkowski teaches collecting fungus samples. Since mold is a fungus, it would be inherent that mold samples can be collected as well. Applicants' use of the terms 'environmental sample' and 'environmental surface' is unclear and the terms are not defined in the claims or specification. Therefore, the terms have been interpreted reasonably broad. One of ordinary skill in the art would reasonably consider fungus to include mold.

Applicants' arguments regarding the Dimou patent and the use of placards are considered moot in view of the new grounds of rejections.

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to LaToya I. Cross whose telephone number is 703-305-7360.


The examiner can normally be reached on Monday-Friday 8:30 a.m. - 5:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill A. Warden can be reached on 703-308-4037. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

LIC

September 8, 2003


Jill Warden
Supervisory Patent Examiner
Technology Center 1700